THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 31520 of 1998

O r d e r:

The petitioner was appointed as Conductor in the respondent-APSRTC in the year 1979. On 27.01.1982, while he was conducting the bus, a check was exercised by the checking officials, and subsequently he was issued a charge sheet alleging certain cash and ticket irregularities. He submitted his explanation denying the charges leveled against him. Thereafter, an enquiry was conducted, and the Enquiry Officer, who conducted the enquiry, submitted his report stating that the charges leveled against the petitioner are proved. Based on the enquiry report, a notice was issued to the petitioner to show cause as to why she shall not be removed from service. The petitioner submitted his explanation thereto. Upon consideration of the same, the

1st respondent-Depot Manager, passed an order dated 28.06.1982 removing the petitioner from service. Assailing the said removal order, the petitioner filed an appeal before the appellate authority, and the same was rejected, by order dated 21.03.1983. Thereafter, the petitioner raised an industrial dispute in I.D.

No. 79 of 1991, and the Labour Court, vide award dated 20.05.1992, set aside the order of removal passed by the 1st respondent, and directed the respondent-Corporation to reinstate the petitioner into service without any back wages and any other attendant benefits, but with only nominal continuity of service for a period of five years prior to his reinstatement shall be taken for reckoning of computing his *inter se* seniority, and that he is not entitled to any monetary benefits accruing

to him on that score and the petitioner is not entitled to his increment for a period of one year to come, from the date of his reinstatement with cumulative effect. Questioning the said award insofar as not granting continuity of service, back wages and attendant benefits, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that since the passengers informed the petitioner that they have already taken tickets, the petitioner has not issued tickets to them, and subsequently while he was verifying whether all the passengers in the bus possessed tickets or not, the check was exercised. He further submits that the Labour Court failed to see that the passengers have categorically stated that they have not paid requisite fare to the petitioner, as such, the petitioner has not committed any misconduct. He submits that the Labour Court, having held that the petitioner had no *mala fide* intention of cheating the Corporation and having set aside the order of removal passed by the disciplinary authority, and having ordered his reinstatement into service, ought to have granted consequential reliefs that ensue upon reinstatement, and non-granting of the same, is illegal and arbitrary, and more so when the petitioner was not gainfully employed during the period he was out of service and reinstated into service.

The learned Standing Counsel for the respondent-APSRTC, however, supported the impugned order. He submitted that the charges against the petitioner stood proved. The order of removal passed by the disciplinary authority, was confirmed by the appellate authority, and even though the Labour Court, concurred with the view of the disciplinary and appellate authority and found that the charges are proved, but considering the fact that the petitioner had no *mala fide* intention of cheating the Corporation, felt that punishment of removal is

disproportionate to the charges proved, and accordingly took a lenient view and ordered the Corporation to reinstate the petitioner into service without continuity of service and back wages, and the same cannot be said to be an illegal or arbitrary award, and prayed that no interference is called for therewith.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

As can be seen from the award of the Labour Court, the petitioner did not allege any irregularities in the conduct of the domestic enquiry. The petitioner was charge sheeted alleging that he failed to observe the rule 'issue and start', failed to collect the fare and issue tickets to ten passengers, and closed S.R. of all denominations up to stage No.1 without completing the issuance of tickets. In the enquiry, the charges leveled against the petitioner stood proved. Based on the enquiry report, a show cause notice was issued, and upon considering the explanation submitted by the petitioner thereto, the disciplinary authority, passed an order of removal, and the same was confirmed by the appellate authority. The Labour Court, on re-

appreciation of the entire material on record, though found that the charges are proved, it held that the petitioner had no *mala fide* intention to cheat the Corporation. Holding so, the Labour Court felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the charges proved, and accordingly set aside the order of removal, and directed his reinstatement into service without backwages and other attendant benefits. It is not as if the Labour Court has exonerated the petitioner of the charges alleged against him. The Labour Court, even though upheld the charges leveled against the petitioner, it took a lenient view and feeling that the punishment of removal from service is disproportionate to the proved charges, in that there was no element of misappropriation, ordered reinstatement of the petitioner with some punishment. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**. It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. As stated above, the Labour Court has set aside the order of removal passed by the disciplinary authority and ordered reinstatement of the petitioner into service on the ground that the

punishment imposed was disproportionate to the charges proved. In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 19th September 2007.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63